## THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA **EASTERN DIVISION** No. 4:09-CV-00003-BR

BENJAMIN G. HINES, JR.,	)	
	)	
Plaintiff,	)	
	)	<b>MOTION FOR SUMMARY</b>
	)	<u>JUDGMENT</u>
V.	)	Fed. R. Civ. P. 56
	)	
TRIAD MARINE CENTER, INC.	)	
d/b/a BOATS UNLIMITED NC and	)	
JOHN BANISTER HYDE,	)	
	)	
Defendants.	)	

AND NOW, come the Defendants, Triad Marine Center, Inc. d/b/a Boats Unlimited and John Banister Hyde, by and through their attorneys, Dickie, McCamey & Chilcote, P.C., and pursuant to Federal Rule of Civil Procedure 56, submit that Plaintiff's negligence claim should be dismissed, with prejudice, as a matter of law given that there exists no genuine issue of material fact that Plaintiff cannot make a prima facie showing of negligence against the Defendants based on Plaintiff's own testimony, and further, that Plaintiff's proffered expert opinions in support of his claims should not be considered as they are unreliable pursuant to Fed. R. Evid. 702 and <u>Daubert v. Merrell Dow Pharmaceuticals</u>, Inc., 509 U.S. 579 (1993).

In support of the relief requested, Defendants incorporate by reference herein their accompanying Memorandum of Law in Support of Motion for Summary Judgment and Exhibits.

This 30<sup>th</sup> day of December, 2009.

Respectfully submitted,

DICKIE, McCAMEY & CHILCOTE, P.C.

By: /s/ J. Lawson Johnston

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## **CERTIFICATE OF SERVICE**

I hereby certify that on December 30, 2009, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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